

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Denial of the
Application of Angela Martin to Provide
Family Child Care

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

The above matter came on for hearing before Administrative Law Judge Scott Newman on December 15, 2009 at Stevens County Human Services, 10 East Highway 28, Morris, MN 56267.

Theodora D. Economou, Assistant Stevens County Attorney, appeared on behalf of Stevens County and the Minnesota Department of Human Services (Department). Angela Martin (Applicant) appeared without counsel. The hearing record closed on December 15, 2009.

STATEMENT OF THE ISSUES:

Should the Application of Angela Martin for a license to provide family child care be denied?

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. In February 2009 Angela Martin submitted an Application to provide Family Child Care Services to Stevens County Human Services and Minnesota Department of Human Services, Division of Licensing (Department).¹

2. Elisa Ettesvold, Stevens County Social Worker, processed the Application on behalf of Stevens County (County) and the Department.²

3. As part of processing the license application, Angela Martin disclosed to Elisa Ettesvold that Martin's mother had been a licensed child care provider in the City

¹ Testimony of Angela Martin.

² Test. of Elisa Ettesvold.

of Murdock, Swift County. Martin further disclosed that her name had been on that license and that the license had been revoked by the Department in 2008.³

4. On behalf of the Department, Ettesvold contacted Swift County Human Services and obtained a copy of its licensing file.⁴ A review of the documents from Swift County Human Services reveals that Angela Martin and her mother were Co-Licensees on Family Child Care License, License No. 110376 as early as 2004 and they renewed it thereafter in 2006 and 2008.⁵

5. On July 24, 2008 Swift County Human Services recommended to the Department that the Family Child Care License, License No. 110376 involving Angela Martin and her mother be revoked. In September 2008, the subject license was revoked by the Department.⁶

6. Angela Martin's name was added to her mother's Family Child Care License in approximately 2004, at the recommendation of a Swift County Social Services worker and for the convenience of her mother, so Angela Martin would be able to care for the children if there was an emergency.⁷

7. The daycare facility operated by Angela Martin's mother was located in Murdock, Minnesota. From May 2003 through December 2009, Angela Martin resided in Kerkhoven, Starbuck, and Morris, Minnesota, but never in Murdock, Minnesota.⁸

8. During the time that Angela Martin's name was added to her mother's daycare license, Angela Martin was not active on a regular basis in running the daycare facility, did not provide care for children at the facility and in fact was employed and resided in Starbuck, Minnesota, and Morris, Minnesota.⁹

9. On October 6, 2009, the Department issued an Order Denying the Application of Angela Martin to provide Family Child Care, License No. 1055098 R02 (in Application).¹⁰

10. The basis of the denial of Angela Martin's application was due to the fact a license on which Angela Martin was a co-licensee had been revoked less than five years prior to the date of the application.¹¹

11. The Applicant, Angela Martin, challenged the order denying her application for a license on the basis that she was not an active participant in her

³ Test. of A. Martin and E. Ettesvold

⁴ Test. of E. Ettesvold and Ex. 9.

⁵ Test. of A. Martin and E. Ettesvold and Exs. 6, 7, 9 and 10.

⁶ Test. of E. Ettesvold, A. Martin and Exs. 1 and 2.

⁷ Test. of A. Martin.

⁸ Test. of A. Martin.

⁹ Test. of A. Martin and Exs. 1, 4 and 11.

¹⁰ Test. of E. Ettesvold and Ex. 5.

¹¹ Test. of E. Ettesvold and Ex. 3.

mother's daycare facility and did not realize that having her name on her mother's daycare license would jeopardize her ability to obtain a license.¹²

12. Prior to submitting an Application for a Family Child Care License, Martin worked at a family child care facility in Morris, Minnesota, and attended Alexandria Technical School where she took classes in child development, graduating in 2005. Martin's employment at the child care facility in Morris, Minnesota, and her post high school education were completed with a goal of ultimately having her own licensed family daycare facility.¹³

13. To the extent that the Memorandum that follows explains the reasons for these Findings of Fact and contains additional Findings of Fact, including Findings on credibility, the Administrative Law Judge incorporates them into these Findings.

14. The Administrative Law Judge adopts as Findings any conclusions that are more appropriately described as Findings.

Based on the Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Commissioner and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50 and 245A.07, subds. 2 and 2a.

2. The Department of Human Services gave proper and timely notice of the hearing in this matter.

3. The Department has complied with all relevant substantive and procedural requirements of law and rule.

4. Angela Martin properly appealed the Order of Denial and complied with all procedural requirements of law and rule.¹⁴

5. The Department evaluated Angela Martin's application by examining the documents from Swift County Human Services concerning License No. 110376.¹⁵

6. The Department properly determined that the applicant was a license holder on License No. 110376,¹⁶ and determined that said license had been revoked in 2008.¹⁷

¹² Test. of A. Martin.

¹³ Test. of A. Martin.

¹⁴ Test. of E. Ettesvold, A. Martin and Ex. 4.

¹⁵ Minn. Stat. § 245A.04.

¹⁶ Minn. Stat. § 245A.02, subd. 9.

¹⁷ Ex. 2.

7. A license holder whose license has been revoked “**must**” not be granted a license for five years following the revocation.¹⁸

8. In construing the statutes of this state, words are construed as defined by statute.¹⁹

9. The word “must” is defined by Minnesota law when used in the context of a statute as “mandatory.”²⁰

10. Because the Applicant, Angela Martin, was a license holder whose license was revoked within five years of the date of her application for a Family Child Care License, the Department irrespective of mitigating circumstances, does not have the authority to grant the application and it therefore must be denied.

11. The Memorandum that follows explains the reasons for these Conclusions, and the Administrative Law Judge therefore incorporates that Memorandum into these Conclusions.

12. The Administrative Law Judge adopts as Conclusions any Findings that are more appropriately described as Conclusions.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge recommends to the Commissioner of Human Services that: the Order of Denial be affirmed and that the Application to provide family child care be denied.

Dated: January 5, 2010

s/Scott J. Newman

SCOTT J. NEWMAN
Administrative Law Judge

Reported: Digitally Recorded

¹⁸ Minn. Stat. § 245A.08, subd. 5a.

¹⁹ Minn. Stat. § 645.08 (1).

²⁰ Minn. Stat. § 645.44, subd. 15a.

NOTICES

This report is a recommendation, not a final decision. The Commissioner of Human Services (Commissioner) will make the final decision after a review of the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Under Minn. Stat. §§ 14.61 and 245A.07, subd. 2a(b), the parties adversely affected have ten (10) calendar days to submit exceptions to this Report and request to present argument to the Commissioner. The record shall close at the end of the ten-day period for submission of exceptions. The Commissioner then has ten (10) working days from the close of the record to issue his final decision. Parties should contact Cal Ludeman, Commissioner of Human Services, Box 64998, St. Paul, MN 55155, (651) 431-2907, to learn the procedure for filing exceptions or presenting argument.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

The sole issue to be decided in this case is whether the application by Angela Martin for a Family Child Care License should be denied. The applicant does not deny that she was a co-licensee on a license that was revoked within five years of the date of her application. She does however argue that nonetheless, her application should be granted due to mitigating circumstances, which the undersigned finds truthful and accurate. Specifically, it is determined that the applicant's name was on her mother's license solely for the convenience and benefit of her mother. At no time was the applicant actively participating in her mother's daycare program in any meaningful manner when the incidents occurred which led to the revocation of her mother's daycare license. Further, the Applicant has credibly testified that she has a strong desire to be involved in providing child care and that she is very disappointed that her application has been denied, particularly in view of the effort she has put forth in furthering her formal education and working in the childcare industry.

However the statute as written, 245A.08, subd. 5a, does not allow as a defense to the denial of her application the mitigating circumstances alleged by the applicant. To the contrary, whether intended or not, the legislature clearly and in unambiguous terms directed the Department to deny the application of anyone whose license had been revoked within five years of the date of an application for a new license. In most situations, this goal would be consistent with the rule governing the licensing of daycare facilities to insure the protection of the children served.²¹ It is presumed that if the legislature intended to allow the Department to take into consideration mitigating circumstances in evaluating whether a license application should be approved or denied, the statute in question would contain the necessary language. Because it does

²¹ Minn. R. 9502.325.

not, it is a bar to the relicensing of any licensee, for a period of five years from the date of revocation, no matter the circumstances.²²

To be very clear, this case turns solely on a question of law. There is no evidence to indicate that this applicant at any time placed the care, health, safety or development of any children in jeopardy. Should the applicant choose to reapply for licensure after the expiration of the statutorily mandated five year period, it would be inappropriate to take into consideration the denial of this license in evaluating whether the applicant should be licensed.

S. J. N.

²² Minn. Stat. 645.17.